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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4671 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not?-Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

PANCHMAHALS DIST PANCHAYAT

Versus

MAMBHAI S PATEL

Appearance:

MR SK JHAVERI for Petitioner

MR PS PATEL for Respondent No. 1.

Respondent No.2 served.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/02/97

ORAL JUDGEMENT

This petition under Article 227 of the Constitution challenges the judgment and decree dated

December 5, 1983 passed by the Second Joint Civil Judge (Junior Division) Godhra in Regular Civil Suit No.653 of 1982.

The facts leading to filing of the present petition are as under :-

The petitioner-Panchmahals District Panchayat Service Selection Committee was constituted under the Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964, which Rules were framed under the Gujarat District Panchayats Act, 1961, for the purpose of preparing a select list for various posts under the District Panchayat which were included in the Schedule to the said Rules. The persons, whose names are included in the Select List for concerned posts, may be given appointment by the District Panchayat.

In the year 1980, the petitioner had issued an advertisement and invited applications for the posts of Gram Sevaks to be appointed under the Panchmahals District Panchayat. Respondent No.1 (hereinafter referred to as 'the plaintiff') had applied in response to the advertisement and had appeared at the written test. Thereafter, the plaintiff was called for oral interview on May 9, 1982. At the time of the interview, the petitioner-Committee raised an objection about the eligibility of the plaintiff on the ground of age limit. Accordingly, the plaintiff was not interviewed. The petitioner-Committee ultimately prepared the Select List and the same was operated.

Respondent No.1-plaintiff, filed Regular Civil Suit No.631 of 1982, in the Court of the learned Civil Judge (J.D.), Godhra, praying for a declaration that the plaintiff was within the age limit as per the Circular dated August 16, 1980 and that the plaintiff was entitled to be appointed on the post of Gram Sevak. The plaintiff also prayed for an injunction to restrain the Panchmahals District Panchayat as well as Panchmahals District Panchayat Service Selection Committee from appointing any person without first appointing the plaintiff on the said post.

In response to the summons issued by the trial court, the petitioner-Committee (defendant No.2 in the suit) appeared, but defendant No.1-District Panchayat did not appear and, therefore, the suit was ordered to proceed ex parte against defendant No.1. The plaintiff, however, gave a pursis, Exhibit 55, for deleting defendant No.2 (i.e. the present petitioner-Committee)

and the name of defendant No.2 was accordingly deleted from the cause title of the plaint.

Ultimately, the suit proceeded ex parte and the learned trial Judge, by his judgment and decree dated December 5, 1983, decreed the suit merely on the ground that the averments made by the plaintiff were not controverted.

The Panchmahals District Panchayat Service Selection Committee has filed the present petition for challenging the aforesaid judgment and decree. Ordinarily, an appeal is required to be filed for challenging such a judgment and decree, but on behalf of the petitioner-Committee, learned counsel Mr.S.K. Zaveri has submitted that since the name of the Committee was deleted, it was not a party to the suit and could not have filed the appeal as of right, and further that the present petition was admitted in the year 1985 and, therefore, instead of requiring the petitioner-Committee to file an appeal after obtaining leave to appeal after lapse of almost 12 years, the Court may kindly hear the present petition on merits.

On behalf of respondent No.1, Mr.P.S. Patel, Advocate, has appeared, but has submitted that he has no instructions in the matter. The Court has, therefore, to proceed on the basis of the submissions made by the learned counsel without getting any information about the development/s which might have taken place between the date of the admission of the petition in September, 1985 and today.

In the first place, when the plaintiff had challenged the decision of the Petitioner (a statutory Committee) considering the plaintiff as ineligible on the ground of age limit, it is surprising as to why the plaintiff chose to delete the Petitioner-Committee (which was defendant No.2 in the suit) from the proceedings. Mr.Zaveri submitted that the District Panchayat had proceeded on the basis that since it was the decision of the Petitioner-Committee, which was being challenged, and since the petitioner-Committee had already appeared through an Advocate before the trial court, it was not necessary for the District Panchayat to appear in the matter. Mr.Zaveri further submitted that because the District Panchayat had not caused any appearance to be filed on its behalf, and the Petitioner-Committee had appeared through an Advocate in the aforesaid suit, the plaintiff wanted to avoid the inconvenience of facing the petitioner-Committee whose decision had led to the filing

of the suit and, therefore, prayed for deletion of the petitioner-Committee in order to obtain an ex parte order against the District Panchayat. In the facts and circumstances of the case, the inference drawn by Mr.Zaveri cannot be said to be unreasonable or unfounded.

On the merits of the matter, the trial court directed the District Panchayat to give appointment to the plaintiff on the post of Gram Sevak before making appointment of other persons. While admitting the petition, this Court had granted ad-interim stay of implementation of the above direction of the trial court. The plaintiff does not appear to have moved the Court for vacating or modifying the said ad-interim order and the same has continued to operate till today.

It is obvious that even according to the plaintiff, the Selection Committee had raised a dispute regarding eligibility of the plaintiff on the ground of age limit and had held the plaintiff to be ineligible. Hence, the plaintiff was not even interviewed. Under the circumstances, there cannot be any question of giving any direction to include the plaintiff's name in the Select List without first requiring the Committee to consider the plaintiff's case. In this view of the matter, even if the trial court was right in accepting the plaintiff's case that he was within the age limit, the trial court could not have passed a decree in favour of the plaintiff straight away directing the District Panchayat to appoint the petitioner on the post of Gram Sevak. At the most, the learned trial Judge could have directed the District Panchayat Service Selection Committee to consider the plaintiff's case on the basis that the plaintiff was within the age limit. The District Panchayat could have been directed to consider the plaintiff for appointment if the plaintiff was selected. However, as stated above, the Selection Committee was already deleted from the proceedings and, therefore, such a direction could not have been given.

The next question, therefore, is what order the Court should pass at this stage. The learned counsel for respondent No.1-plaintiff has stated that he has no instructions in the matter. For enabling the learned counsel to obtain instructions from his client, the matter was adjourned on the last occasion, but today also, the learned counsel has stated that he has no instructions in the matter. It, therefore, appears to be more than likely that respondent No.1 might have got employment elsewhere and he is not interested in pursuing

the proceedings. He has not even made any attempt in the last twelve years to move the Court for vacating or modifying the ad-interim relief. Hence the judgment and decree passed by the trial court deserves to be set aside, but this Court has thought it fit not to give any further directions in the matter either to the District Panchayat or to the Petitioner-Committee.

In view of the aforesaid discussion, the petition is allowed and the judgment and decree passed by the learned trial Judge in Regular Civil Suit No.653 of 1982 is hereby quashed and set aside.

Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

(apj)